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April 13, 2000

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UNITED STATES DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY

By Hand Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

WT-
Docket # 99-168

Re: Ex parte comments by Dataradio Corporation, DA 00-559

Dear Ms. Salas:

On Thursday, April 13, 2000, I submitted the attached ex parte comments to Chairman Kennard regarding the above referenced proceeding.

I submit two copies of this notice.

Very truly yours,



Albert J. Catalano

Enclosures

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Before The
Federal Communications Commission
Washington, DC 20554

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In the Matter of)	
)	
Service Rules for the 746-764 and 776-794)	WT Docket No. 99-168
MHz Bands, and Revisions to Part 27 of the)	
Commission's Rules)	
)	DA 00-559
Auction of Licenses For The 700 MHz)	Report No. AIC-00-33-A
Guard Bands Scheduled for June 14, 2000)	

To: William E. Kennard, Chairman

EX PARTE COMMENTS OF DATARADIO CORPORATION

Dataradio Corporation ("Dataradio") hereby submits ex parte comments in response to the Wireless Telecommunications Bureau's (the "Bureau") request for comments on proposed auction rules for the 700 MHz Guard Band spectrum,¹ and in reply to comments submitted by Motorola, Inc. ("Motorola") in this proceeding.

Dataradio is a leading manufacturer of wireless equipment dedicated exclusively to data transmission, and is a major provider to the public safety sector and other critical mission users in the utility, energy, and land transportation sectors. Dataradio is committed to the goals of forward-looking spectrum management and efficiency, and to servicing the fast expanding data communications needs of spectrum users.

¹ Public Notice, *Auction of Licenses for the 700 MHz Guard Bands Scheduled for June 14, 2000*, DA 00-559 (rel. March 10, 2000).

DISCUSSION

This auction, with its promise to establish a band manager, is a harbinger of novel and exciting change in the regulatory framework for wireless communications, and a watershed for competitive opportunity. Dataradio applauds the work of the Bureau in establishing this auction and generally agrees with the Commission's proposed auction procedures. In order to ensure realization of the enormous potential in competitive opportunity that this auction presents, it is critical that the auction Rules be structured to ensure the participation of as many bidders as possible. For this reason, Dataradio agrees with the comments of Motorola and of the Industrial Telecommunications Association in questioning the proposed up front payment and minimum opening bid requirements.

The auction winner for this spectrum will face a number of unique circumstances for which there is little precedent or guidance, raising the uncertainty and risk involved in this auction. These circumstances include: (i) incumbency of broadcasters on the channels to be auctioned, and no firm plan or certain date for moving them; (ii) potential of interference from the adjacent commercial licensees whose operations are yet to be defined; (iii) affording protection to an as yet unimplemented adjacent public safety spectrum; and (iv) the untested concept of a guard band manager.

The valuation model used by the Commission in establishing minimum bids and upfront payments for this auction does not take these uncertainties and the resulting higher risk factors into account. The result is an extremely high figure placed on this spectrum compared to what potential bidders might be willing or able to spend in light of the many risk factors. As explained in Motorola's comments, this is particularly true with small businesses that will not be able to sustain or justify participating in the auction

with the current upfront payment requirements. Congress has expressed a clear intent that the Commission must, in auctioning spectrum, establish mechanisms to ensure that small businesses have the opportunity to participate:

the Commission shall seek to promote the ... following objectives: ... promoting economic opportunity and competition ... by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.²

Fostering competition in this manner is necessary to ensure attaining the goals of spectrum efficiency, technological advancement and competitive pricing.

The Guard Band's success, much like that of other 700 MHz spectrum that is going to be implemented in the next few years, will depend on the availability of technology as well as the cost of putting users into service. Both of these factors will be adversely affected by the current upfront payments that will place an unreasonably high financial burden on the band manager, and in turn, on licensees. This, in turn, will result in manufacturers being slower to make investment in products and technology for this spectrum. On the other hand, by lowering the entry barriers for bidders to take account of the high risk involved, the Commission will help to foster creative competitive solutions for this spectrum, which will shorten the timeframe for technological development. This in turn will help to ensure the early development of spectrum efficient equipment not only for the Guard Band, but also for the Public Safety bands. Thus, by lowering the upfront payments and required opening bids for the Guard Band auction, the Commission will help to facilitate rapid deployment in the public safety bands as well.

Dataradio urges the Commission to reevaluate its decisions for this very different kind of spectrum. Specifically, Dataradio suggests that significant discounting of the

² Section 309(j)(3)(B) of the Communications Act of 1934, as amended, 47 USC §309(j)(3)(B).

“market value” for this spectrum is appropriate not only in response to the heightened risk factors involved but also to reflect the costs to be assumed by the Band Manager in the redistribution of the spectrum. Finally, and probably most important of all, is the need to avoid the possibility that excessive pricing will endanger the successful institution of the Band Manager concept in this spectrum.

Dataradio therefore supports the analysis presented in the Motorola comments, but believes that the Motorola proposal is based on historical risk scenarios that are lower than those involved in the instant auction as they do not take into account all of the unique risks associated with this auction, for some of which there is no precedent for arriving at a valuation. On the other hand, much of this spectrum will be deployed for non-voice applications, with the objective not only of enhancing communications performance, but also of lowering cost and enhancing competitiveness. As a result, Dataradio believes a further incentive is warranted to attract entrepreneurs to the auction, with the goal of spurring pioneering development. For this reason, Dataradio believes the valuations as proposed by Motorola should be reduced by half.

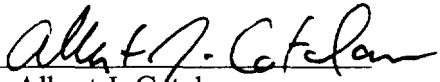
CONCLUSION

Dataradio recognizes that the Commission has made significant progress in effectively architecting the 700 MHz Band to meet the needs of the public at large. Further, Dataradio applauds the Commission’s recognition and provision for a variety of user needs, and in particular the need for a Band Manager for the Guard Band spectrum. Nevertheless, it is inappropriate to apply a uniform process to the Guard Band and the much larger 700 MHz commercial band allocation, as the two envision vastly different

spectrum applications. Dataradio respectfully recommends that the Commission work to ensure the success of the Guard Band and Band Manager process by significantly reducing the upfront payment and minimum bid values for the instant auction.

Respectfully submitted,

DATARADIO CORPORATION

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DATED: April 13, 2000